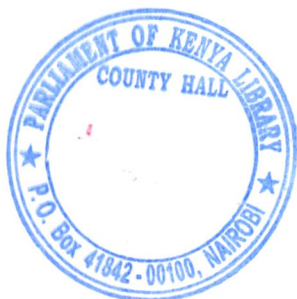


Approved for tabling.

REPUBLIC OF KENYA



SWA
18/12/14

KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – SECONDESSION - 2014

REPORT OF THE
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL
SECURITY ON ITS CONSIDERATION OF THE SECURITY LAWS (AMENDMENT)
BILL, 2014



CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER, 2014

PREFACE

Mr. Speaker, Sir,

The Departmental Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No. 216(1) of the National Assembly and has executed its mandate in accordance with the provisions of the said Standing Order 216 (5), which mandates the Committee to, inter alia;

- (i) study and review all legislation referred to it;*
- (ii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

Mr. Speaker,

The Committee, according to Schedule II of the Standing Orders, examines the following subjects:

- i) Public Administration
- ii) National security
- iii) Internal Security
- iv) Immigration
- v) Prisons Service
- vi) National Youth Service, and;
- vii) Natural disasters

The Committee oversees the following Ministries and Departments:

- i) The Presidency (Cabinet Services & State Affairs)
- ii) Ministry of Interior and Coordination of National Government
- iii) Public Service Commission
- iv) National Police Service Commission
- v) Independent Policing Oversight Authority

Mr. Speaker, Sir,

The following are the Members of the Committee:

The Hon. Asman Kamama, MGH, OGW, MP - **Chairperson**
The Hon. Alois M. Lentoimaga, MP - **Vice Chairperson**
The Hon. Ababu Namwamba, EGH, MP
The Hon. Joseph Lekuton, MP
The Hon. Alice Wahome, MP
The Hon. Zakayo K. Cheruiyot, MP

The Hon. Timothy W. Wetangula, MP
The Hon. Patrick Ole Ntutu, MP
The Hon. Ali Isaack Shaaban, MP
The Hon. Samuel Moroto, MP
The Hon. Humphrey Njuguna, MP
The Hon. Francis K. Mwangangi, MP
The Hon. Rashid J. Bedzimba, MP
The Hon. David Gikaria, MP
The Hon. Mohamed Shidiye, MP
The Hon. Jane Machira, MP
The Hon. Ibrahim Abdi Saney, MP
The Hon. Joseph O. Ndiege, MP
The Hon. (Maj. Rtd.) John K. Waluke, MP
The Hon. WanjikuMuhia, MP
The Hon. Akuja Protus Ewesit, MP
The Hon. Joseph M. Kahangara, MP
The Hon. Ahmed Abdikadir Ore, MP
The Hon. Grace Kiptui, MP
The Hon. George Theuri, MP
The Hon. James Bett, MP
The Hon. Benard Shinali, MP

Mr. Speaker,

The Security Laws (Amendment) Bill, 2014 underwent First Reading on Tuesday, 9th December, 2014 and was effectively committed to the Committee on Administration and National Security for consideration of Amendments as provided for in Standing order 127(1).

A procedural motion was moved to reduce the publication period of the Bill from fourteen days to one day. The reduction of the publication period for the Bill was meant to fast-track its processing and ensure that it could be returned to the House for debate and passage as soon as the Committee concluded their scrutiny.

Pursuant to Article 118(b) and Standing Order 127(3) which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 10th December, 2014, informing the public that the Committee was considering amendments to the Security Laws (Amendment) Bill, 2014, and inviting them to submit any representations they might have on the proposed amendments.

Mr. Speaker,

The Committee held ten meetings to consider the salient issues that the Bill was seeking to address. A number of the meetings were held with stakeholders during the scrutiny of the Bill. Some of the stakeholders included;

- i) Commission on the Implementation of the Constitution (CIC)
- ii) Kenya National Commission on Human Rights (KNCHR)
- iii) Independent Policing Oversight Authority (IPOA)
- iv) Article 19
- v) Muslim Leadership
- vi) TUMECHOKA
- vii) Bunge La Mwananchi
- viii) Representatives of Women, the Youth and the Clergy

The Committee received a written memorandum from the CIC with a matrix on contentious clauses on the Bill. The Committee adopted the CIC proposals for amendments and the Chairperson would subsequently move the amendments during the Committee of the Whole House.

The Committee also received written memoranda from the public. Persons who sent memoranda included Mr. Paul Mwaura Mwangi of P.O. Box 55083 – 00200, Nairobi, Mr. John Muema, Mr. Maina Njuguna, Ms. Teresia Kahura and Winnerman Consult among others. The Committee also received written Memoranda from Bunge La Mwananchi, Coalition for Constitution Implementation and representatives of Women, the Youth and the Clergy.

Mr. Speaker, Sir,

The country has witnessed an upsurge in insecurity in general and terror related attacks in particular. The government's response to such insecurity has been affected by gaps in security related legislation, among other factors. The Bill therefore seeks to make amendments to several legislations as well as the Penal Code (Cap. 63) and the Criminal Procedure Code (Cap. 75) to close such legal loopholes. The Security Laws (Amendment) Bill, 2014 is in keeping with the practice of making a number of

amendments which do not merit the publication of a separate Bill and consolidating them into one Bill.

Mr. Speaker,

The Bill seeks to amend one hundred and nine (109) clauses from nineteen Acts that deal with security matters as well as clauses in the Penal Code and the Criminal Procedure Code. In particular, the Bill seeks to amend:

- a) The Public Order Act (Cap. 56) to make specific reference to Governors, Members of County Assemblies, Counties, the Cabinet Secretary for Interior and Co-ordination of National Government, the Director of Public Prosecutions, the Inspector-General of Police, and the National Police Service with a view to removing references to offices and institutions that have been made obsolete in the reorganization of the Government of Kenya undertaken since the promulgation of the Constitution of Kenya on August 27th 2010. The Bill also seeks to enhance the penalties for offences committed under the Act.
- b) The Preservation of Public Security Act (Cap. 57) to conform to the principles enshrined in the Constitution of Kenya relating to equality and freedom from discrimination and freedom and security of the person. The Bill seeks to amend the Act to bring it into conformity with the provisions of Articles 27 and 29 of the Constitution. The Bill also seeks to amend the Act to make reference to offices as recognized under the Constitution such as the Cabinet Secretary.
- c) The Penal Code (Cap. 63) to make provision for the offence of a public officer aiding or facilitating the commission of a felony, the offence of a public officer facilitating the entry of a criminal into Kenya, and the offence of a public officer concealing the whereabouts of a criminal and prescribes the punishment for these offences. The Bill also seeks to make it a felony for any person to intentionally insult the modesty of any person and prescribes a punishment for the same.
- d) The Extradition (Contiguous and Foreign Countries) Act (Cap. 76) to harmonise the Act with the offices and institutions created under the Constitution of Kenya. It also seeks to enhance co-operation between Kenya and contracting nations in relation to the speedy extradition of persons from Kenya to those contracting countries. It also seeks to ensure that where a

court is satisfied that a warrant of extradition has been properly issued by a contracting party the procedure outlined in section 7 of the Act need not be followed.

- e) The Criminal Procedure Code (Cap. 75) by inserting new provisions in relation to the arrest and detention of a person beyond the twenty-four hours stipulated in the Constitution, regarding the question of bail in relation to certain persons who have been arrested or detained, in relation to the form of evidence that may be disclosed to an accused person before or during the course of a trial, in relation to the execution of search warrants, and the power of the Director of Public Prosecutions to appeal against the acquittal of a person in a trial in a subordinate court or the High Court or the dismissal of charges against that person. The Bill also seeks to provide for the police supervision of certain classes of persons who have been convicted of criminal offences, and the amendment of orders or warrants.
- f) The Registration of Persons Act (Cap. 107) by inserting new provisions in relation to the establishment of identification committees or identification agents, the cancellation or revocation of identity cards, and the enhancement of certain penalties under the Act.
- g) The Evidence Act (Cap. 80) to provide for the admissibility of electronic and digital evidence, the proving of written statements, the proving of certain facts, and the receiving of oral testimony by teleconferencing or video conferencing.
- h) The Prisons Act (Cap. 90) to make provision for the separation of prisoners convicted of terrorism-related offences while in prison, and the creation and maintenance of a database of all prisoners detained in Kenya.
- i) The Firearms Act (Cap. 114) to make provision for the establishment of a Firearms Licensing Board and for the regulation of the handling or use of certain new classes or types of weapons and armoured vehicles.
- j) The Radiation Protection Act (Cap. 243) to make provisions regarding the membership of the Radiation Protection Board, and the regulation of nuclear and radioactive material.

- k) The Rent Restrictions Act (Cap. 296) to make provision for the maintenance and form of records of tenants by landlords.
- l) The Kenya Airports Authority Act (Cap. 395) to make provision for prohibitions or restrictions and the zoning of land around aerodromes, and the establishment of an Inter-Agency Security Advisory Committee, its membership, its mandate and connected matters.
- m) The Traffic Act (Cap. 403) to make provisions for the enhancement of certain penalties prescribed under the Act and for the regulation of car-selling establishments and similar establishments by the Cabinet Secretary. The Bill also proposes to amend the Traffic Act in order to provide for an offence for in instances where an owner or general dealer uses a motor vehicle or trailer without the an identification plate. The Bill further requires the suspension of drivers' licence of a driver who has been involved in an accident resulting in fatalities and preliminary investigations by police show that person is responsible for the accident. The Bill also increases the general penalty from ten thousand shilling to one hundred thousand shillings, for any offence committed under the Act and where no penalty has been prescribed. The Bill requires the Cabinet Secretary to make rules relating to licensing of establishments of establishments or persons engaged in selling, hiring or leasing motor vehicles, motor vehicle spare parts dealers and garages.
- n) The Investment Promotion Act (Cap 485) to specify the matters in which the Cabinet Secretary is required to make Regulations on, which inter alia includes prescribing the categories of employees to be issued with work permits and prescribing procedures for the vetting of investors.
- o) The Labour Institutions Act (No. 12 of 2012) to constitute an inter-ministerial agency from various government ministries which shall be responsible for overseeing the registration and operations of the employment bureaus and agencies. Every employment bureau or agency is required to obtain approval from the government prior to sending Kenyan citizens abroad.
- p) The National Transport Safety Authority Act (No.33 of 2012) to require all vehicles including private vehicle to be licenced before being used as public service vehicles. Commercial service vehicle whose tare weight exceeds three thousand and forty eight kilograms are also required to be licensed before being operated. The grounds for revocation or suspension of a licence have

been proposed. The bill has also introduced the introduction of a general penalty where no penalty has been prescribed under the Act.

- q) The Refugees Act (No. 13 of 2006) to prescribe the limitation of the number of refugees or asylum seekers permitted to stay in Kenya. The Bill further permits Parliament to vary the limitation provided under the Act. The Refugees are also required to remain in their designated camp until their status has been processed and concluded.

- r) The National Intelligence Service Act (No. 28 of 2012) to empower police officers to be able to stop and detain persons whom they witness engaging in serious crimes or are in possession of objects or material that could be used for the commission of a serious crime. The Bill has also provided for the undertaking of covert operations for purposes of neutralizing threats against national security. The Bill further places an obligation on the State Organs, State department agency or public entity that receives intelligence from the Service to act on or utilize the intelligence.

- s) The Prevention of Terrorism Act (No. 30 of 2012) to create an offence for possession of weapons for terrorist purposes, possession of weapons in places of worship or public places, possession of weapons by an institution or place of worship and radicalization. Publication of offending material is also prohibited. The Bill has also created an offence for a person who knowingly attends or receives training or instructions at any place of worship. A presumption shall be made regarding a person who travels to a country designated by the Cabinet Secretary to be a terrorist training country, where that person does not pass through the designated exit points. The Bill also proposes to allow the National Security Organs to intercept communication for the purposes of detecting, deterring and disrupting terrorism. The Bill establishes the Counter-terrorism center which shall be responsible for the co-ordination of national counter-terrorism efforts in order to detect, deter and disrupt terrorism.

- t) The Kenya Citizenship and Immigration Act (No. 12 of 2011) to establish a Border Control and Operations Coordination Committee which shall be responsible for the formulation of policies and programmes for the management and control of designated entry and exit points and coordination of exchange of information between the respective agencies. The Bill further expounds on the validity and limitations of a Service Passport.

- u) The National Police Service Act (No. 11A of 2011) to give powers to the Inspector-General to designate the most senior officer from either the Kenya Police Service or the Administration Police Service to have the overall responsibility in the county. The Bill permits the arrest of officer including the immigration or any public officer found engaging in any unlawful conduct. The Bill establishes the National Police Service Disciplinary Board which shall be responsible for inquiring into matters related to discipline of officers of the rank of or above the rank of assistant superintendent brought to its attention.

- v) The Civil Aviation Act (No. 21 of 2013) to prohibit flying in an unmanned aerodome where air traffic services are not provided without prior approval from the Cabinet Secretary.

Mr. Speaker, Sir,

The Committee considered and approved several amendments including amendments to the Registration of Persons Act, the Prisons Act, the Firearms Act, the Investment Promotion Act, the Refugees Act, the National Intelligence Service Act and the Prevention of Terrorism Act.

Mr. Speaker,

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

Mr. Speaker, Sir,

On behalf of the Committee, and pursuant to Standing Order 111(2), it is my pleasant duty to table in the House the Report of the Departmental Committee on Administration and National Security on its consideration of the Security Laws (Amendment) Bill, 2014.

Signed.....  Date..... 

Hon. Asman Kamama, MGH, OGW, MP
Chairman, Departmental Committee on Administration and National Security

**COMMITTEE'S CONSIDERATION OF THE SECURITY LAWS
(AMENDMENT) BILL, 2014**

The Committee deliberated on the Bill as follows;

- Clause 1 - Proposed amendment
- Clause 2 - Proposed amendment
- Clause 3 - Proposed amendment
- Clause 4 - Proposed amendment
- Clause 5 - Proposed amendment
- Clause 6 to - Clause 30 – Agreed to
- Clause 31 - Proposed amendment
- Clause 32 - Proposed amendment
- Clause 33 to - Clause 37 – Agreed to
- Clause 38 - Proposed amendment
- Clause 39 - Agreed to
- Clause 40 - Proposed amendment
- Clause 41 - Proposed amendment
- Clause 42 to - Clause 43 – Agreed to
- Clause 44 - Proposed amendment
- Clause 45 - Proposed amendment
- Clause 46 - Proposed amendment
- Clause 47 - Clause 48 - Agreed to
- Clause 49 - Proposed amendment
- Clause 50 - Agreed to
- Clause 51 - Proposed amendment
- Clause 52 to - Clause 61 - Agreed to
- Clause 62 - Proposed amendment
- Clause 63 - Proposed amendment
- Clause 64 - Agreed to
- Clause 65 - Proposed amendment
- Clause 66 - Proposed amendment
- Clause 67 - Proposed amendment

Clause 68 - Proposed amendment
Clause 69 - Agreed to
Clause 70 - Proposed amendment
Clause 71 - Proposed amendment
Clause 72 - Proposed amendment
Clause 73 - Proposed amendment
Clause 74to - Clause 75 -Agreed to
Clause 76 - Proposed amendment
Clause 77 - Proposed amendment
Clause 78 - Clause 79 - Agreed to
Clause 80 - Proposed amendment
Clause 81 - Proposed amendment
Clause 82 - Agreed to
Clause 83 - Proposed amendment
Clause 84 - Agreed to
Clause 85 - Proposed amendment
Clause 86 - Clause 95 – Agreed to
Clause 96 - Proposed Amendment
Clause 97 - Proposed Amendment
Clause 98 - Proposed Amendment
Clause 99 - Clause 102 - Agreed to
Clause 103 - Proposed Amendment
Clause 104 - Agreed to
Clause 105 - Proposed Amendment
Clause 106 - Proposed Amendment
Title - Proposed Amendment

**COMMITTEE'S PROPOSED AMENDMENTS TO THE SECURITY LAWS
(AMENDMENT) BILL, 2014**

The Committee proposes the following amendments to the Security Laws (Amendment) Bill, 2014;

CLAUSE 1

THAT, clause 1 be amended by inserting the words “and shall come into force upon publication” at the end thereof.

CLAUSE 2

THAT, clause 2 be deleted.

CLAUSE 3

THAT, clause 3 be amended by deleting paragraph (c).

CLAUSE 4

THAT, clause 4 be deleted.

CLAUSE 5

THAT, clause 5 be deleted.

CLAUSE 31

THAT, clause 31 be amended in the proposed new section 18A—

- (a) in subsection (1), by deleting the word “may” appearing after the word “Director” and substituting therefor the word “shall”;
- (b) in subsection (2), by inserting the words “in writing” immediately before the words “of the intention”;
- (c) by inserting the following new subsection immediately after subsection (2)—

“(2A) The cancellation of a registration and the revocation of a card under subsection (2) shall not take effect until after the expiry of fifteen

days from the date of cancellation and revocation to allow the card holder to appeal to a court of competent jurisdiction”;

CLAUSE 32

THAT, clause 32 be amended in the proposed section 20A(1) by inserting the words “by an officer of or above the rank of a Chief Inspector or a magistrate” immediately after the word “ him”.

CLAUSE 38

THAT, clause 38 be amended, in the proposed new section 36A, by deleting the words “with other prisoners” appearing immediately after the word “any communication” and substituting therefor the words “other than with a prisoner convicted of an offence under the Prevention of Terrorism Act, 2012.”

CLAUSE 40

THAT, clause 40 be amended in paragraph (b) by inserting the word “silencers” immediately after the word “mufflers” appearing in the proposed new paragraph (c).

CLAUSE 41

THAT, clause 41 be amended in the proposed new section 3(2), by—

(a) deleting paragraph (a).

(b) inserting the following new paragraphs immediately after paragraph (b)—

“(c) one representative from the Office of the Attorney-General;

(d) one representative from a private members group of lawfully registered gun owners;

(e) one representative from Kenya Wildlife Service”.

CLAUSE 44

THAT, clause 44 be deleted.

CLAUSE 45

THAT, clause 44 be deleted.

CLAUSE 46

THAT, clause 46 be deleted.

CLAUSE 49

THAT, clause 49 be deleted.

CLAUSE 51

THAT, clause 51 be deleted.

CLAUSE 62

THAT, clause 62 be amended in the new section 6A(1) by—

- (a) deleting the words “and detain any person whom the officer” appearing immediately after the word ”stop” and substituting therefor the words” arrest and handover any person to the nearest police station”;
- (a) deleting paragraph (c)

CLAUSE 63

THAT, clause 63 be amended by deleting the expression “IIC”.

CLAUSE 65

THAT, clause 65 be amended by deleting paragraph (b).

CLAUSE 66

THAT, clause 66 be amended—

- (a) in the proposed title to the new Part V by deleting the word “COVERT” and substituting therefor the word “SPECIAL”;
- (b) in the proposed new section 42(1), by deleting the word “covert” appearing before the word “operations” and substituting therefor the word “special”;

(c) in the proposed new section 42(3)(c), by deleting subparagraph (v) and substituting therefor the following new subparagraph—

“(v) take all necessary action, within the law, to preserve national security; and”

(d) in the proposed new section 42(3), by inserting the words “and accompanied by a warrant from the High Court in the case of paragraph (c)” immediately after the words “shall be specific”.

CLAUSE 67

THAT, clause 67 be deleted.

CLAUSE 68

THAT, clause 68(a) be amended by deleting the proposed new paragraph (dd) and substituting therefor the following new paragraph—

“(dd) such other public officer as the President may appoint”.

CLAUSE 70

THAT, clause 70 be amended by inserting the following new proviso at end of the proposed new subsection (3)—

“Provided that for purposes of the intelligence referred to in paragraph (a), it shall be specific, actionable and timely”.

CLAUSE 71

THAT, clause 71 be amended by deleting the words “as far as practicable” and substituting therefor the words “shall afford the affected entity reasonable opportunity”.

CLAUSE 72

THAT, clause 72 be amended by deleting the proposed new section 9A and substituting therefor the following new section—

Facilitation
of terrorist
acts

9A. A person who advocates, promotes, advises or facilitates with intent to commit a terrorist act, any act preparatory to a terrorist act, commits an offence and is liable, on conviction to imprisonment for a term not exceeding twenty years.

CLAUSE 73

THAT, clause 73 be amended—

(a) in the proposed new section 12A—

(i) in subsection (1), by deleting the word “twenty” appearing before the words “less than” and substituting therefor the following words “twenty-five”;

(ii) by deleting subsection (2) and substituting therefor the following new subsection—

“(2) Without prejudice to subsection (1), unlawful possession of improvised explosive devices, assault rifles, rocket propelled grenades or grenades shall be presumed to be for terrorist or criminal purposes”.

(b) in the proposed new section 12B, by deleting the words “in a place of worship institution” appearing before the words “or a public place” and substituting therefor the following words “in any premises, institution”;

(c) in the proposed new section 12C(1), by—

(i) deleting the words “place of worship institution” appearing before the words “or public place” and substituting therefor the following words “premises, institution”;

(ii) deleting the words “twenty years” appearing before the words “not exceeding” and substituting therefor the words “thirty years”;

(d) in the proposed new section 12C(2), by deleting the words “in a place of worship institution” appearing before the words “or a public place” and substituting therefor the words “in any premises, institution”.

CLAUSE 76

THAT, clause 76 of the Bill be amended by deleting sub-clause (a)

CLAUSE 77

THAT, clause 77 be amended by deleting paragraphs (a) and (b).

CLAUSE 80

THAT, clause 80 of the Bill be amended in the proposed new section 36A by—

- (a) renumbering the existing provision as subclause (1);
- (b) inserting the following new subclause immediately after the renumbered subclause (1)—

“(2) The Cabinet Secretary shall make regulations to give effect to subsection (1), and such regulations shall only take effect upon approval by the National Assembly.

(3) The right to privacy under Article 31 of the Constitution shall be limited under this section for the purpose of intercepting communication directly relevant in the detecting, deterring and disrupting terrorism”.

CLAUSE 81

THAT, clause 81 of the Bill be amended by deleting the word “subordinate” and substituting therefor the words “Chief Magistrate”.

CLAUSE 83

THAT, clause 83 of the Bill be amended in proposed new section 39A by deleting the words “without due” appearing immediately after the words “before it” and substituting therefor the words “without undue”.

CLAUSE 85

THAT, clause 85 be amended—

- (a) in the proposed new section 40A(2) by—
 - (i) inserting the word “national” immediately after the words “such other” appearing in paragraph (e);
 - (ii) inserting the following new paragraphs immediately after paragraph (c)—

“(ca) the Attorney General”;

“(cb) Directorate of Immigration and Registration;”

(b) in the proposed new section 40A(3), by deleting the words “period of” appearing immediately after the words “for a” and substituting therefor the words “period not exceeding”;

(c) by inserting the words “or companies” at the end of paragraph (2)(e) of the proposed section 40B.

CLAUSE 96

THAT, clause 96 of the Bill be amended by deleting paragraph (na) and substituting therefor the following new paragraph—

“(na) designate from among the county commanders in each county the most senior officer from either the Kenya Police Service or the Administration Police Service, who shall coordinate in consultation with the two Deputy Inspector-Generals, the operational command and control of the county, and the officer so designated shall, with respect to coordination, execute operational command and control in a manner that respects the command structure set out in Article 245(3) of the Constitution”.

CLAUSE 97

THAT, clause 97 of the Bill be amended by deleting the words “National Assembly” appearing in the proposed new subsection (2), and substituting therefor the following word “Parliament”.

CLAUSE 98

THAT, clause 98 be amended by inserting the expression “(3)” immediately after the expression “(2)”.

CLAUSE 103

THAT, clause 103 of the Bill be amended in the proposed new subsection (3A), by deleting the words “not exceeding ten ” and substituting therefor the words “ not less than ten years and not more than twenty”.

CLAUSE 105

THAT, clause 105 be amended in new section 95A(1) by deleting the words “or magistrate” appearing immediately after the word ”judge” in paragraph (a)

CLAUSE 106

THAT, clause 106 be deleted.